

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
)  
SOUTH AUSTIN COALITION COMMUNITY) )  
COUNCIL )  
vs. )  
COMMONWEALTH EDISON COMPANY, )  
) No. 02-0706  
Complaint as to closing of )  
service office at Austin Bank )  
Service Center in Chicago, )  
Illinois. )  
Chicago, Illinois  
December 7th, 2004

Met pursuant to notice at 1:00 p.m.

BEFORE :  
THE ILLINOIS COMMERCE COMMISSION.

APPEARANCES:

MR. EDWARD HURLEY, CHAIRMAN  
MS. ERIN O'CONNELL-DIAZ, COMMISSIONER  
MS. LULA FORD, COMMISSIONER  
MR. KEVIN WRIGHT, COMMISSIONER;

Also Present:

MR. MICHAEL S. PABIAN  
10 South Dearborn Street, 35th Floor  
Chicago, Illinois 60603  
appearing for Commonwealth Edison;

MR. ALLEN CHERRY  
711 South River Road, Suite 703  
Des Plaines, Illinois 60016  
Appearing for the South Austin Coalition  
Community Council.  
LIVAN REPORTING COMPANY, by  
Dara A. Perkovich, CSR

1                                    I N D E X  
2       Witnesses:               Direct Cross   Re-   Re-   By  
                                     None           direct cross   Examiner  
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6  
7                                    E X H I B I T S  
8       Number                    For Identification                    In Evidence  
                                     None  
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1       CHAIRMAN HURLEY: Good afternoon. Do we have a  
2 hook up with Springfield?

3       A VOICE: Yes, you do.

4       CHAIRMAN HURLEY: Thank you very much. I'll  
5 convene this meeting of the Illinois Commerce  
6 Commission. The purpose of the meeting, as has  
7 been previously published, is to hear oral  
8 arguments in Docket No. 02-0706, entitled South  
9 Austin Coalition Community Council versus  
10 Commonwealth Edison.

11               The complaint was originally filed by  
12 South Austin against Com Ed seeking an order from  
13 the Commission which would direct Commonwealth  
14 Edison, amongst other things, to maintain its  
15 Austin Bank Service Center and the South Austin  
16 Coalition Community Council requested oral argument  
17 in this case on September 7th, which the Commission  
18 granted on November 10th.

19               Today each party will have 15 to  
20 20 minutes to present its initial arguments. I  
21 would like to begin this morning, if there is  
22 nothing further -- does the ALJ -- the ALJ is back

1    there.  We will begin with the South Austin  
2    Coalition Community Council who is represented by  
3    Allen Cherry, representative for a very long time,  
4    going back to when he and I were both young and  
5    hanging out at the Commission.  Are there any  
6    questions of the commissioners before Mr. Cherry  
7    begins his presentation today?  Mr. Cherry, you can  
8    proceed.

9                               ORAL ARGUMENT

10                              BY

11                              MR. ALLEN CHERRY:

12                              Good afternoon Chairman, commissioners,  
13    my name is Alan Cherry, representing South Austin  
14    Coalition Community Council.  This case presents  
15    the Commerce Commission with an opportunity to make  
16    a strong statement in favor of consumers with great  
17    benefit to those consumers at virtually no cost to  
18    Commonwealth Edison.  SACCs complaint challenges  
19    Commonwealth Edison's decision to go out of the  
20    business of providing face-to-face customer service  
21    on important customer service issues, which has the  
22    consequence of detrimentally impacting the

1 customer's health and safety.

2                   We ask that you review Edison's decision  
3 as the Public Utilities Act requires and remedy the  
4 hardship brought about by the closing of Edison's  
5 last customer service office.

6                   I appreciate the opportunity to speak  
7 with you today, but unfortunately there is a  
8 limited amount that I can ask you, based on the  
9 state of the record. We are only asking you today  
10 to reject the hearing examiner's recommendation,  
11 that this case be dismissed before the opportunity  
12 to present evidence. So let me discuss where we  
13 are procedurally.

14                   First, agreeing with SACC on this point  
15 would simply allow hearings on the evidence already  
16 submitted to take place. Second, the legal  
17 consequences of this being before you in this  
18 posture is that the benefit of the doubt is given  
19 to us as the complainant regarding the allegations  
20 that we make. Third, unfortunately the facts are  
21 not as well developed as this case could be and we  
22 hope will be to allow you to give us the relief

1     that we think is justified.

2                     Just a few more words about procedure.

3     In the 13 months after this case was filed, Edison  
4     answered our complaint in detail. The parties  
5     engaged in extensive discovery with Edison  
6     providing more than 3,000 pages of documents. SACC  
7     prefiled the testimony and rebuttal testimony of 12  
8     witnesses while Edison presented the prefiled  
9     testimony of 3 witnesses. The parties negotiated  
10    and drafted an extensive prehearing memo which  
11    included 70 uncontested facts that would greatly  
12    have facilitated the evidentiary hearings. Most of  
13    the work necessary to bring this case before you on  
14    a full record and for a decision on the merits has  
15    been completed.

16                    The dispute before the Commission is not  
17    new to SACC, is not new to Edison and is not new to  
18    the commission. In fact, it's a very old one. In  
19    the early 1980's, Edison proposed closing its  
20    customer service office on the west side of  
21    Chicago. SACC complained to the Commission. That  
22    case, while important, was certainly not as

1 compelling as this one, because Edison at that time  
2 did not propose to close its other customer service  
3 offices. Edison filed its motion to dismiss SACC's  
4 case then, identical to the one it filed in  
5 December 2003. The full Commission denied the  
6 motion, the case proceeded to hearing and then to  
7 oral argument before the Commission.

8           During that oral argument, Edison  
9 announced it no longer sought not to have a  
10 customer service office on the west side. Later  
11 the parties quickly tied up the practical details  
12 of that commitment on the part of Edison and the  
13 case was dismissed by agreement. The Commission's  
14 rejection of Edison's motion to dismiss --

15       COMMISSIONER O'CONNELL-DIAZ: So Mr. Cherry,  
16 there was no order entered in that by the  
17 Commission?

18       MR. CHERRY: That is correct. The Commission's  
19 rejection of Edison's motion to dismiss has  
20 consequences for us today looking at the same  
21 motion filed by Edison. It shows us that SACC is  
22 correct about the Commission having jurisdiction

1 over its complaint. Also under Illinois law, if the  
2 Commission reverses course an exact 180 degrees, it  
3 needs to articulate an explanation, something the  
4 proposed order fails to do for this reversal,  
5 otherwise it's violative of SACC's due process  
6 rights.

7 COMMISSIONER O'CONNELL-DIAZ: What would be the  
8 basis for that if there was no Commission order  
9 entered in the 86 case?

10 MR. CHERRY: I still think it was a statement of  
11 Commission policy. It was determinative in the  
12 outcome of the case, otherwise the case would have  
13 died without the relief sought being achieved,  
14 although I do agree with you that no order granting  
15 that relief was formally entered.

16 SACC's brief set out the basis for  
17 argument that this case should go ahead and I want  
18 to be able to respond to your questions within the  
19 time granted to us, but let me summarize our legal  
20 position. By closing the Austin Bank Service  
21 Center, Edison has terminated an essential service.  
22 This is a drastic change in the way Edison

1 interacts with customers. Customers can no longer  
2 see a customer service representative face to face  
3 to discuss issues such as disconnection and  
4 reconnection that impact directly upon health and  
5 safety.

6                   Section 8508 of the Public Utilities Act  
7 grants the Commission jurisdiction over termination  
8 of service and the Commission has routinely  
9 exercised that jurisdiction, not just in the  
10 previous SACC case, but in a great number of other  
11 cases. With your indulgence, let me read the  
12 definition of service from Section 3-115 as this is  
13 very important. Service is used in its broadest  
14 and most inclusive sense and includes not only the  
15 use or a combination afforded customers, consumers  
16 or patrons, but also any product or commodity  
17 furnished by a public utility and the plant,  
18 equipment, apparatus appliances, property and  
19 facilities employed by or in connection with any  
20 public utility in performing any service or in  
21 furnishing any product or commodity and devoted to  
22 the purposes in which such public utility is

1 engaged and to the use and accommodation of the  
2 public.

3           Allowing this case to proceed is the  
4 opposite of controversial. Addressing allegations  
5 such as those made by SACC is a basic part of  
6 Commission's business as the Public Utilities Act  
7 recognizes. Illinois courts have consistently  
8 allowed the Commerce Commission to examine  
9 terminations of service to determine whether a  
10 termination will endanger the health and safety of  
11 customers and whether it will create inconvenience  
12 and discomfort.

13           The argument Edison articulates against  
14 SACC boils down to its contention that customers  
15 receive the same service by calling 1-800 Edison 1  
16 as they do in person. Edison does present its  
17 customers with a variety of electronic and  
18 telephonic ways to work with customer service reps  
19 and in fact many customers do prefer those methods.  
20 However, some customers are simply not able to  
21 achieve the results and service they need without  
22 the option of face-to-face interactions. And those

1 customers tend to be seniors, low income and the  
2 disabled.

3           Of course there is the ability to  
4 quickly exchange documents which is gone. The  
5 testimony presented by SACC, especially the  
6 testimony of Bob Von Drasek (phonetic), we believe,  
7 demonstrates the inadequacy of the 800 system.  
8 Although that brings us back to why we're here  
9 today. The hearing examiner has not made findings  
10 of fact based on the record, she's made  
11 conclusions, with no basis, and this matter should  
12 go to hearing, the proposed -- those conclusions of  
13 fact are improperly contained in the order, should  
14 be rejected until such time as you have a record  
15 that would allow you to make those decisions.

16           The inadequacies of the 800 number  
17 system are most severe in terms of customers  
18 seeking emergency energy assistance, an area where,  
19 by definition, health and safety are implicated.  
20 It's not just SACC and its witnesses that contend  
21 the face-to-face communication is essential. The  
22 Commission rules recognize that face-to-face

1 dealings are part of a proper and fair customer  
2 service system. General order 80, Section 160,  
3 dispute procedures, provides in Subsection A, the  
4 utility shall assign to one or more of its  
5 personnel, at each of its offices where it  
6 transacts business with the public, the duty of  
7 hearing in person any dispute by an applicant,  
8 customer or user.

9           I previously alluded to the minimal, and  
10 actually it's virtually nonexistent, cost to  
11 Edison. According to the prefiled testimony of Bob  
12 Von Drasek, based on statements made by  
13 Commonwealth Edison witnesses at a City Council  
14 hearing, Edison's closing of the Austin Bank  
15 Service Center saved it only \$30,000 per year out  
16 of total Exelon yearly expenses of \$11.8 billion.  
17 Of course this testimony is subject to cross and  
18 Edison's ability to present counter evidence. But  
19 the point remains that granting Edison's motion to  
20 dismiss would prevent any facts of this matter from  
21 being presented to the Commission.

22           For these reasons we make the modest

1 request to the Commission that this matter, nearly  
2 complete already, be tied up by returning it to the  
3 hearing examiner. Thank you.

4 CHAIRMAN HURLEY: Thank you. Is there any  
5 information in the record as it exists now as to  
6 how many customers used the -- this is the Lake  
7 Street National Bank of Austin building, is that  
8 Lake and Austin, something like that?

9 MR. CHERRY: How many did use it?

10 CHAIRMAN HURLEY: How many on average use this  
11 facility to pay their bills, if we were developing  
12 a record I would be able to ask the question  
13 better, how many pay their bills there and how many  
14 customers go there to speak to a service  
15 representative because they have problems? Two  
16 different scenarios, I suppose.

17 MR. CHERRY: Yes, that's how Edison broke out the  
18 figure, and that it's really only a matter of us  
19 finding it, because I'm sure we'll be in agreement.

20 MR. PABIAN: I think -- do you have the --

21 MR. CHERRY: I was about to say Edison's answer  
22 No. 19, and we agree with that, says that in 2001,

1 113,000 customer payments were made at the Austin  
2 Bank Service Center.

3 MR. PABIAN: I think 48 percent of those were by  
4 check, and then there were -- in 2001, there were  
5 18,946 customer interviews. Isn't that right? I  
6 think it's in our joint uncontested findings.

7 MR. CHERRY: I agree we have resolved those  
8 issues and agreed with those numbers.

9 CHAIRMAN HURLEY: I'm sorry, my next question  
10 followed on that question, I can't remember what it  
11 is, so perhaps while I think about that. Someone  
12 else might want to ask Mr. Cherry a question.

13 COMMISSIONER FORD: I guess my only question  
14 would be, where can a customer make cash payments  
15 now if the service center is closed?

16 MR. CHERRY: They can make them at currency  
17 exchanges at an additional cost.

18 COMMISSIONER O'CONNELL-DIAZ: What is that  
19 additional cost?

20 MR. CHERRY: There is several currency -- it  
21 depends on whether the currency exchange has what's  
22 called a contract with Edison. If they do it

1 limits it to 50 cents, otherwise the typical charge  
2 as presented in our testimony, I think Edison  
3 agrees, is a dollar.

4 MR. PABIAN: Actually it's a dollar now --

5 MR. CHERRY: It's been raised to a dollar.

6 COMMISSIONER O'CONNELL-DIAZ: Also they can pay  
7 at Dominicks and some other venues.

8 MR. CHERRY: At the kiosk I believe it's \$3. I  
9 guess that's part of our argument, that the  
10 alternatives of these 113,000 payments will always  
11 present problems in terms of additional cost and  
12 perhaps delay that could cause someone to lose, for  
13 example, the right for someone to participate in  
14 deferred payment plan.

15 There was also at one time a crediting  
16 issue, and let me give that briefly, that if the  
17 Austin Bank Service Center entered receipt of  
18 payments onto a computer system that immediately  
19 showed Edison that they were paid. A currency  
20 exchange did not, although the testimony that  
21 Edison's presented projected that by now, and I  
22 guess if we had hearings we would have a detailed

1 answer on that, that by now the currency exchange  
2 system was going to link so that one minor problem  
3 would no longer be the case. Although with mail  
4 payments it still would be there. In fact, I  
5 believe the testimony of Bob Von Drasek does  
6 contend that many people use the Austin Service  
7 Center when they knew their payment was right at  
8 the due date.

9 CHAIRMAN HURLEY: You've discussed and I've read  
10 about this '86 case. Have other service centers  
11 closed, I mean, I believe they have, between 1986  
12 and now.

13 MR. CHERRY: All of them in fact.

14 CHAIRMAN HURLEY: Pretty much everything is  
15 closed. Did you bring actions before, I have  
16 necessarily no recollection of them.

17 MR. CHERRY: No, these were the clients that were  
18 most concerned and also they thought they most had  
19 the best used the facility. One thing that  
20 happened is that they were very physically close in  
21 terms of energy assistance process and would often  
22 walk papers sent clients back upstairs and got

1 things done, you know, right then and there because  
2 of the happenstance of the facility. So I think  
3 it's also true that SACC was much better at using  
4 the Edison service center than many other  
5 communities were.

6 CHAIRMAN HURLEY: And this is their area, this is  
7 the area of SACC.

8 MR. CHERRY: Absolutely. And we don't know  
9 whether other people from the City traveled to  
10 this. We tried to get some data from Edison but  
11 Edison didn't have this stored and it wasn't really  
12 fair to ask them to look through it.

13 CHAIRMAN HURLEY: I know exactly where it is,  
14 it's right off the green line. You just get off  
15 the green line and you're right there.

16 COMMISSIONER WRIGHT: You rely on Section 8508  
17 regarding termination in making your case. How is  
18 this termination? This is not abandonment of  
19 service, the customers are still be able to get a  
20 degree of service from the incumbent utility  
21 through a variety of ways, so where is the harm  
22 here?

1       MR. CHERRY: Let me address those one at a time.  
2       It's abandonment of a type of service, I will  
3       continue to maintain that. And one thing we're  
4       trying in this record, one of the reasons  
5       Commission looks at these sorts of issues and  
6       problems, for example a railroad station going from  
7       an attendant to a prepay system, the Commission  
8       looks at that and then decides if there is harm to  
9       the public. We contend there's harm. Edison  
10      contends there's not. And we are asking you the  
11      opportunity to put together a record that shows  
12      that.

13      COMMISSIONER WRIGHT: What would be the  
14      demonstrable harm?

15      MR. CHERRY: The demonstrable harm would be  
16      delays in processing people's energy assistance  
17      because they don't have documents. The inability  
18      of seniors and the disabled and some people without  
19      telephones in the home to be able to use the other  
20      systems to achieve what they should want.

21                   The testimony of Bob Von Drasek talks  
22      about an instance where someone in a situation, and

1 obviously heat service impacts health and safety,  
2 called the 800 system and was denied a deferred  
3 payment plan without the opportunity to speak to a  
4 real person, based on the properties that the  
5 system put through there. The harm is to the  
6 customer's health and safety. Denial or delay of  
7 the energy services that are essential, especially  
8 in the winter.

9 COMMISSIONER O'CONNELL-DIAZ: Have other  
10 utilities closed their service centers throughout  
11 the Chicago area?

12 MR. CHERRY: The only one I've looked at recently  
13 is Edison's sister company in Philadelphia still  
14 has one.

15 COMMISSIONER O'CONNELL-DIAZ: In the Chicago  
16 area.

17 MR. CHERRY: In the Chicago area, I would assume  
18 so. You might know more than I do.

19 CHAIRMAN HURLEY: What was the question?

20 COMMISSIONER O'CONNELL-DIAZ: I was asking  
21 counsel whether he could reference other utilities  
22 that in fact have closed their service centers

1   also.

2       MR. CHERRY: I believe --

3       CHAIRMAN HURLEY: Well, People's has been  
4   closing.

5       MR. CHERRY: People's closed one of theirs.

6       COMMISSIONER WRIGHT: Are you not asking us to  
7   reverse what is a business decision? This  
8   Commission is usually reluctant to micromanage the  
9   utilities and their business decisions, in that  
10   this is the only office that remains open, so I  
11   don't know if there can be a claim for  
12   discrimination since all the other offices but this  
13   one has been closed.

14               Are you not asking the Commission to  
15   really go beyond its own authority because of a  
16   disagreement of a utility's business decision when  
17   still services can be offered, maybe not as readily  
18   available and face to face and the value of that  
19   may bring to the customer, but that seems to be the  
20   way a lot of services are going these days,  
21   financial services, just as an example. Aren't you  
22   asking us to reach way beyond our authority using

1 Section 8508 when this is really a business  
2 decision?

3 MR. CHERRY: Once again you asked a lot of  
4 questions, so if I don't answer all of them please  
5 remind me. I think that the pejorative business  
6 decision that Edison puts out there is to get you  
7 thinking you shouldn't be doing it. But we're not  
8 asking you to micromanage the color of their  
9 stationery. We are asking you to get involved when  
10 we believe that we can show at the hearing process  
11 substantial harm to Edison's customers, to their  
12 health and safety and to their convenience and  
13 that's what the Commerce Commission is all about.  
14 You all the time get involved in utility business  
15 decisions.

16 COMMISSIONER WRIGHT: But how is your claim any  
17 stronger than anyone else's claim that may not  
18 reside in the Austin community, but they may reside  
19 elsewhere? What differentiates you from any other  
20 community in which one of these service centers  
21 have been closed that requires us to take an extra  
22 step to keep it open?

1       MR. CHERRY: The simple answer is we're the ones  
2   that brought this case. If other people were upset  
3   they should have brought the case. It may be that  
4   they don't have an active voice that comes before  
5   the Commission and asks you to do your job. It may  
6   be that they are happier. I am personally happy  
7   using my computer and my telephone, but that  
8   doesn't mean that everybody is, and it doesn't  
9   mean, and I believe the record will show it, once  
10   it's completed, there are a population of people  
11   that fail to get a result that the Commission rules  
12   say they should get because they can no longer go  
13   face to face and present their problem.

14               That's what's unique about this case.  
15   It's here before you and it soon will be here, I  
16   hope, with a record that will allow you to see  
17   exactly what we're saying in terms of how this has  
18   harmed people and it's taken it beyond the color of  
19   Edison's stationery.

20       COMMISSIONER O'CONNELL-DIAZ: Mr. Cherry, if I  
21   might follow up on Commissioner Wright's question,  
22   you suggested earlier that this ruling by the

1 administrative law judge was fact based. And in  
2 fact isn't that a legal issue whether the  
3 Commission has in fact really jurisdiction over the  
4 point that Commissioner Wright just referenced and  
5 that's the basis of her decision in this matter,  
6 this juncture, would you agree with that ? Would  
7 you agree that it's a legal decision that she made  
8 based on the law?

9 MR. CHERRY: No, I don't. I agree that it should  
10 be a legal decision. And if you read our  
11 exceptions in her order you'll see where we pointed  
12 out to her making factual conclusions. One of which  
13 is the adequacy is the of the 800 system and there  
14 is no place for that in a motion to dismiss.  
15 That's why we are asking you to send it back to  
16 her.

17 I agree that this case should be based  
18 only on the considerations that Commissioner Wright  
19 brought out. As you followed up, I can only agree  
20 that that's how it should have been, but that's not  
21 how it was in the proposed order. There was a mix  
22 of what can only be called factual conclusions

1 supporting the hearing examiner's proposed order.

2 CHAIRMAN HURLEY: Thank you, Mr. Cherry, why  
3 don't we move on. We'll give you some time after  
4 Edison makes their argument. Michael Pabian from  
5 Commonwealth Edison.

6 ORAL ARGUMENT

7 BY

8 MR. PABIAN:

9 Good afternoon, Mr. Chairman, honorable  
10 commissioners. My name is Michael Pabian  
11 representing Commonwealth Edison here today. It is  
12 of course Com Ed's position that its motion should  
13 be granted as a matter of law and that the proposed  
14 order is correct in that regard and that the issue  
15 before the Commission is a legal one and not  
16 dependent on facts. And that Judge Sainsot has  
17 correctly analyzed the issue and proposed a correct  
18 solution.

19 We've gotten into a little bit of  
20 discussion on the background facts and I would like  
21 to continue that discussion a little bit. Although  
22 those facts aren't relevant to the legal issue they

1 do provide a context and do indicate what this case  
2 is not about. Because without those background  
3 facts, as some of which we've touched upon, it  
4 would be very easy to read more into the complaint  
5 than is there. It's a very tightly drafted  
6 complaint, a credit to Mr. Cherry. It is not  
7 overly -- it isn't overly drawn out and to credit  
8 Mr. Cherry it's a well drafted complaint but it's  
9 important to focus on what that complaint is.

10           This case is not about Com Ed isolating  
11 itself from its customers. Importantly the  
12 complaint does not allege, nor could it allege that  
13 Com Ed has not provided its customers with  
14 reasonable means to contact the company about  
15 service. And we talked a little bit about some of  
16 the facts that the Commission can come look at,  
17 they are contained in the party's joint pretrial  
18 memorandum and listed as uncontested facts. But  
19 again, for background purposes only, not really  
20 relevant to the resolution of the motion.

21           Com Ed has implemented a centralized  
22 call in center accessible by toll free 800 number

1 to handle all customer queries. Staffers at the  
2 call in center perform all of the functions handled  
3 by customer interview representatives that staff  
4 the Austin Center. The call in center is open more  
5 hours per day and more days of the week than was  
6 the Austin Center. The call in center employs  
7 staffers fluent in Spanish and contracts with a  
8 foreign language translation service to assist with  
9 customers with who speak foreign languages. The  
10 call in center handles calls from hearing and  
11 speech impaired customers through TDD devices.

12 And although it's not included in the  
13 uncontested facts, I think it goes without saying  
14 that the call in center can accommodate customers  
15 with limited mobility and from all of Com Ed's  
16 service territory, which neither the Austin Center  
17 or any other walk in center could have  
18 accommodated. And finally, in 2002 the call in  
19 center handled over 8 million calls.

20 Also it's important to understand that  
21 this case is not about discrimination as was  
22 alluded to before. The complaint does not allege

1 nor could it allege that by closing the Austin walk  
2 in center Com Ed in any way discriminated against  
3 its customers in the South Austin Coalition  
4 Community Council neighborhood.

5           Again, the uncontested facts show that  
6 Com Ed first established walk in centers before it  
7 had a centralized computer system to handle billing  
8 and customer contact functions. At that time the  
9 bills were actually manually calculated and mailed  
10 from these local offices. Later Com Ed implemented  
11 a centralized computer billing system and customer  
12 contact system and over time traffic at the walk in  
13 centers decreased. And in the late 1980's Com Ed  
14 closed all but 23 walk in centers. In 1996 Com Ed  
15 closed 14 of the remaining 23 centers. And Com Ed  
16 removed the customer interview representative  
17 function from 8 of the 9 centers. Such that for  
18 all of the remaining open centers, except the  
19 Austin center, the only function was payment  
20 processing and for a while providing light bulbs.

21           In other words after March --

22           COMMISSIONER O'CONNELL-DIAZ: If you could just

1 stop, I think we're having a little chair movement.

2 We could afford Mr. Pabian...

3 MR. PABIAN: In other words, after March '96, the  
4 Austin center was the only Com Ed walk in center  
5 with customer interview representatives who could  
6 talk with customers about their service.

7 Traffic at the walk in centers continued  
8 to decline and between March 2001 and March 2002  
9 Com Ed closed all but the Austin center. And it  
10 wasn't until October 11th, 2002 that Com Ed closed  
11 the Austin center, 7 months after the last of the  
12 other walk in centers had been closed and more than  
13 6 years after any customer interview  
14 representatives had been available at any other Com  
15 Ed walk in center.

16 Com Ed won't contest the fact --

17 CHAIRMAN HURLEY: Is that an indication that they  
18 do a lot of business at the Austin street location?

19 MR. PABIAN: I don't -- I don't think that the  
20 business --

21 CHAIRMAN HURLEY: And I'm going to assume that it  
22 took so long to close it because somebody must have

1 felt there was a need for it there.

2 MR. PABIAN: I think to be quite candid,  
3 Mr. Chairman, I think it was a case of the squeaky  
4 wheel. Com Ed certainly won't contest that some of  
5 its customers in the South Austin Coalition  
6 Community Council neighborhood are poor and some  
7 are seniors and some are disabled, but we would  
8 vigorously contend that the South Austin Coalition  
9 Community Council --

10 CHAIRMAN HURLEY: I would argue that it's  
11 probably true in most neighborhoods.

12 MR. PABIAN: That South Austin Coalition  
13 Community Council has no monopoly on that with  
14 respect to the areas that Com Ed serves.

15 Finally I would like to say that this  
16 case really is not just about the Austin center as  
17 was alluded to by some of your questions. Rather  
18 the case is about Com Ed's efforts to bring its  
19 customer contact functionality into the 20th  
20 century and to reconfigure that to make it more  
21 available to more of its customers and more  
22 efficiently than a system of walk in centers.

1                   And while those centers may have been a  
2 friendly presence in the neighborhood, they weren't  
3 readily available to those with limited mobility or  
4 those who found it difficult to walk in during  
5 normal business hours. And they certainly were  
6 very difficult to staff efficiently to handle peak  
7 traffic. It was not easy to move representatives  
8 around from center to center to handle what may  
9 have been a peak load at a given center.

10                   This case is about what the Public  
11 Utilities Act requires of Com Ed, not only in the  
12 South Austin Coalition Community Council  
13 neighborhood but also everywhere else in its  
14 service territory, from the loop to Rock Island and  
15 from Rockford to Channahon. And it's about not  
16 only what the Public Utilities Act requires of Com  
17 Ed, but also what it requires of every other  
18 utility and carrier in the state subject to the  
19 Public Utilities Act. Again, as has been alluded  
20 to here, there has been no other formal complaint  
21 filed against Commonwealth Edison with respect to  
22 the closing of any of its other centers.

1                   But simply put, the Austin center is  
2 closed. It's closed now and it's been closed for  
3 2 years. I would submit that it would be  
4 inappropriate for this commission to consider an  
5 order compelling Com Ed to reopen the center unless  
6 that order is accompanied by a finding that that  
7 opening is compelled by the provisions of the  
8 Public Utility Act, which I would submit the  
9 Commission cannot do in this case.

10                   And further, that it would be  
11 inappropriate for the Commission to make such a  
12 finding, unless it articulated a standard which  
13 would apply everywhere in Com Ed service territory  
14 and to every other utility and carrier in the  
15 state, subject to the Public Utilities Act that  
16 would deal with when a walk in center must be  
17 opened in a given location, despite the  
18 availability of a reasonable alternative customer  
19 contact functionality provided by the public  
20 utility.

21                   Counsel alluded to Section 8508 of the  
22 Public Utilities Act, which treats abandonment of

1 service and requires Commission approval prior to.  
2 And counsel cited a series of railroad cases. And  
3 I think the administrative law judge has indicated,  
4 in fact one of the cases did indicate, that its  
5 basis for determining Commission jurisdiction in  
6 those cases, specifically dealt with changing an  
7 agency -- a station from an agency relationship  
8 where there was face-to-face contact, if you will,  
9 to a prepay station was basically grounded in Part  
10 48 of the Railroad Act which provided that  
11 railroads build and maintain depots in all towns  
12 and villages and the court in one case specifically  
13 indicated that that provision does not mandatorily  
14 require an agency station in villages of over 200  
15 inhabitants. But that the manner in which -- of  
16 operating railroad depots in such communities be  
17 conformably with the public convenience and  
18 necessity.

19 In other words, the manner in which the  
20 stations are operated is a public convenience and  
21 necessity issue subject to Commission review.  
22 Obviously no such provision exists that is

1 applicable in this case, and I would submit that an  
2 analysis of an earlier Supreme Court case, Dixon  
3 versus Pitt Caron may be a little bit more  
4 instructive. And that case, again, dealt with the  
5 change of an agency station to a prepaid station.  
6 The Commission indicated that, quite simply,  
7 adequate service is being provided and there is no  
8 abandonment.

9           And the Commission specifically noted in  
10 that case that anyone who needed to conduct  
11 business with the railroad could simply call the  
12 agent in a nearby town at the company's expense.  
13 This is back in the days before widespread,  
14 certainly as wide as spread proliferation of  
15 telephone service as we have today, that was a 1935  
16 case.

17           Simply put, I think as questions kind of  
18 indicated prior, this is a legal matter, a lot of  
19 those facts aren't specifically relevant to the  
20 legal issues presented by the complaint in this  
21 case, but I think they are reflective of what the  
22 complaint is not about, and I think that's a very

1 important thing in this case, and we would submit  
2 that the Commission -- we would request that the  
3 Commission up hold the administrative law judge's  
4 decision in this case.

5 COMMISSIONER WRIGHT: Can you summarize again for  
6 my benefit why you do not believe Section 8508  
7 applies here? Mr. Cherry has indicated that it  
8 does and the Commission does have jurisdiction or  
9 at least authority, particularly in light where  
10 termination may very well result in demonstrable  
11 harm to the consumer.

12 MR. PABIAN: Sure, Mr. Commissioner. Simply put,  
13 8508 applies to the termination of service. In  
14 this case I would suggest that the South Austin  
15 Coalition Community Council center was not a  
16 service, as it's defined in the Public Utilities, a  
17 discrete service.

18 Now Mr. Cherry indicates, well, uses the  
19 broad definition of service, I think in Article 2  
20 of the Public Utilities Act, which includes all  
21 instrumentalities of provision of service. I think  
22 if we adopted Mr. Cherry's definition, the company

1 would have to come into the Commission every time  
2 it wanted to change a distribution feeder from 2 --  
3 from 4 kV to 12 kV or vice versa.

4 I think the most recent view of this is  
5 to look at the definition of service that is  
6 contained in article -- Part 16 or Article 16 of  
7 the code, which basically splits service into two  
8 categories, tariffed services and competitive  
9 services. This service is clearly not a tariffed  
10 service, per se. There is nothing in the tariff  
11 that speaks of walk in centers in general or the  
12 Austin center in particular. If something is not a  
13 tariffed service, it is deemed to be a competitive  
14 service, competitive not in the sense that it is  
15 available from other parties, but simply by  
16 definition, it's just dumped into that other  
17 category, which includes all services that aren't  
18 tariffed services, or services that are associated  
19 with -- let get the correct definition, because  
20 it's very important here, and I think it applies  
21 very specifically to this case.

22 The competitive services includes any

1 service that has been declared competitive,  
2 contract services, services other than tariff  
3 services that are related to but not necessary for  
4 the provision of electric power and energy or  
5 delivery services. And I think that's, at best if  
6 this is a discrete service, and we would contend it  
7 is not a discrete service, it is one of the latter  
8 category of services, and that is services that are  
9 related to but not necessary for the provision of  
10 electric power.

11               So the maintenance of a walk in center  
12 in the Austin community would be certainly related  
13 to, perhaps, the provision part, but I would submit  
14 to you that the Commission should not or could not  
15 find that it would be -- it would defy logic to  
16 conclude that that center, the maintenance of that  
17 center, is necessary to Com Ed's provision of  
18 electric service because I think that would defy --  
19 would be an allegation that defies logic in this  
20 case.

21           COMMISSIONER O'CONNELL-DIAZ: Mr. Pabian, what  
22 section of the Act were you just quoting?

1 MR. PABIAN: This is the definition of  
2 competitive service contained in Section 16-102.

3 CHAIRMAN HURLEY: Anything further of Mr. Pabian,  
4 at least at this point in time?

5 MR. PABIAN: Thank you.

6 CHAIRMAN HURLEY: Mr. Cherry, why don't you take  
7 about 10 minutes for rebuttal.

8 REBUTTAL ORAL ARGUMENT

9 BY

10 MR. CHERRY:

11 One of the reasons I've enjoyed  
12 litigating this case is Mr. Pabian has fairly  
13 presented Edison's arguments and I don't think I'll  
14 need 10 minutes, but if we have questions, well, so  
15 be it.

16 I have no reason to dispute that Edison  
17 does a good job for a majority of its customers,  
18 I'm not clear why Mr. Pabian, and I don't think he  
19 is disputing, that for some customers they don't do  
20 as good a job. And that's what's determinative  
21 here. This is not a rule making, this is a  
22 complaint case. I don't think you need to

1 articulate standards or whether Edison should have  
2 a customer service on this corner as opposed to  
3 that corner, and whether it should have three  
4 people staffing it or two.

5               This is a complaint case, we presented  
6 allegations and if somebody, other consumer group  
7 in the state wants to use the precedent of this  
8 case to say we should have a customer service  
9 office, you should address that if it's  
10 appropriate. I don't think that they will.

11              Let me talk about the relief. I think  
12 it would be a much longer topic had this been a  
13 case on the merits. What our complaint first asks  
14 for is certainly the reopening of the Austin Bank  
15 Service Center office. The key is face-to-face  
16 interactions and the failure to have those anywhere  
17 at any time is what violates the Public Utility  
18 Act, in our opinion. That's maybe why customers  
19 didn't bring the prior office closings by Edison to  
20 the ICC, they knew they could go somewhere else.  
21 It's maybe why customers and why SACC itself didn't  
22 bring a complaint regarding People's Gas closing of

1 one of its offices, there was still an opportunity  
2 to see people face to face.

3           The relief is a different issue than  
4 whether you should allow Edison to get out of the  
5 business of seeing customers face to face when, as  
6 we well demonstrate, if you remand this case, it  
7 impacts negatively on the customer's health and  
8 safety.

9           I think the 21st century can include me  
10 getting on my computer and dealing with my electric  
11 bill. It can include someone getting on with their  
12 TDD, it can include someone getting on and speaking  
13 their own language, all of that is great. There is  
14 still room in the 21century for people to have  
15 their needs met in person if that's the only way  
16 they can obtain a result that we all agree is fair  
17 and consistent with the Commission rules.

18       CHAIRMAN HURLEY: Anything further of the  
19 gentlemen, Mr. Pabian, Mr. Cherry?

20           The question before the Commission and  
21 has been brought to the Commission is whether or  
22 not the administrative law judge's order which

1 would deny the relief requested in the complaint is  
2 appropriate. That's what we've heard argument on  
3 today.

4 I think appropriate at this point in  
5 time that the Commission take that question under  
6 advisement to resolve at another time. I  
7 appreciate your time Mr. Cherry, Mr. Pabian. And  
8 hearing nothing further, we are adjourned from this  
9 oral argument.

10 (Whereupon those were all the  
11 proceedings had in the  
12 above-entitled matter.)  
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